

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

WILLIAM WALKER,)	
)	
Petitioner,)	
)	
v.)	1:11CV1080
)	
MR. ALVIN W. KELLER, JR.,)	
)	
Respondent.)	

**ORDER AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**

Petitioner, a prisoner of the State of North Carolina, has submitted a petition under 28 U.S.C. § 2254 for a writ of habeas corpus by a person in state custody, together with an application to proceed *in forma pauperis*. For the following reason, the Petition cannot be further processed.

1. Petitioner has indicated that state court remedies have not been exhausted as is required by 28 U.S.C. § 2254(b). (Docket Entry 2, § 12, Grounds One-Three (b)-(d), §§ 13-14.) He states that his former attorney and others will not help him raise his claims in the state courts. He also adds that he is not sure of how to raise them himself. Petitioner does not explain why he has not sought collateral review by filing a motion for appropriate relief in the trial court where he was convicted and then, if that motion is denied, seeking a writ of certiorari from the North Carolina Court of Appeals. This is the ordinary method for prisoners seeking to exhaust their state court remedies through collateral review. This Court cannot review his claims until after his state court remedies are exhausted.

Because of this pleading failure, the Petition should be filed and then dismissed, without prejudice to Petitioner filing a new petition on the proper habeas corpus forms with the \$5.00 filing fee, or a completed application to proceed *in forma pauperis*, after he has exhausted his state court remedies. The Court has no authority to toll the statute of limitation, therefore it continues to run, and Petitioner must act quickly if he wishes to pursue this petition. *See Spencer v. Sutton*, 239 F.3d 626 (4th Cir. 2001). To further aid Petitioner, the Clerk is instructed to send Petitioner a new

application to proceed *in forma pauperis*, new § 2254 forms, and instructions for filing a § 2254 petition, which Petitioner should follow.

In forma pauperis status will be granted for the sole purpose of entering this Order and Recommendation.

IT IS THEREFORE ORDERED that *in forma pauperis* status is granted for the sole purpose of entering this Order and Recommendation. The Clerk is instructed to send Petitioner § 2254 forms, instructions, and a current application to proceed *in forma pauperis*.

IT IS RECOMMENDED that this action be filed, but then dismissed *sua sponte* without prejudice to Petitioner filing a new petition which corrects the defects of the current Petition once he has exhausted his state court remedies.

/s/ L. Patrick Auld

L. Patrick Auld
United States Magistrate Judge

December 13, 2011